



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

May 30, 2018

To Whom It May Concern:

On behalf of the Department of Economic Security/Division of Child Support Services (DCSS), I respectfully comment on the proposed changes to Rule 41 of the Arizona Rules of Family Law Procedure (ARFLP). DCSS is generally supportive of the changes made including the consolidation of former rules 41 and 42. However, DCSS has serious concerns with the proposed change that would allow child support and other family support obligations to be established after service by publication.

The due process goal of service is to provide parties with notice of the action and provide the opportunity to appear, participate and provide the court with their position and evidence. For this reason, many states decline to permit establishment of support obligations after service by publication. Because service by publication is not expected to provide actual notice to the party, it is DCSS's position that it is a better practice to avoid publication. For support proceedings, it is preferable to consider various types of alternative service that would provide actual notice. This may include first class mail to a confirmed address, mailing to relatives or places of employment, posting on the door of residence when a person refuses to answer the door or email. All of these alternatives have a better likelihood of achieving actual notice than publication.

Guidance from the Federal Office of Child Support Enforcement directs that default orders should be avoided whenever possible because default orders are often not based on the paying parent's real ability to pay and therefore do not get paid.¹ Service by publication is, by its nature, the entry of default order without notice. While DCSS could elect not to use publication as a method of service when it obtains an order, DCSS will certainly be called upon to enforce orders obtained in this way and will have difficulty assessing the legitimacy of the service. It should be noted that a parent who is unable to find and serve the other parent with a request for support can apply for IV-D services from DCSS and the agency can use its myriad of locate resources to find the obligor and establish support.

¹ Office of Child Support Enforcement "Entering Default Orders Bench Card, Child Support and the Judiciary".

Child support cases are very different than the commercial litigation involved in *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 73, ¶ 11, 90 P.3d 1236, 1239 (App.2004). It is suggested that a person served by publication can simply move to set aside the judgment if it was not appropriately done. However, in IV-D litigation, the vast majority of parties are self-represented litigants who would have great difficulty doing this. Most of them cannot afford to hire an attorney to represent them. Furthermore, proposed ARFLP Rule 83 limits the time period to have such an order set aside to one year from entry of judgment without regard to when actual notice occurs. DCSS sees this as a fundamental access to justice issue.

DCSS urges the court to reject this change to the rules allowing for publication. However, if publication is to be allowed, the rule should require pre-authorization by the court to determine whether "service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement" as the proposed rule requires. Judicial pre-authorization is required for other types of alternative service.

Sincerely,



Molly McCarthy
Deputy Assistant Director, IV-D Director
Division of Child Support Services